IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 30553 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE KRISHNA PETROLEUM - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR HARDIK P MODH for Petitioner(s) : 1,
MS.SANDHYA D. NATANI, ASSISTANT GOVERNMENT PLEADER for Respondent(s) : 1, 2, 3 AND 5.

MR.V.K. SHAH for Respondent(s) : 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 24/12/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Leave to add Deputy Commissioner, Commercial Tax, Appeal-I, Ahmedabad as party-respondent no.5.

2. **Rule** returnable forthwith. Ms.Sandhya D. Natani, learned Assistant Government Pleader waives service of the notice on behalf of respondents no.1 to 3 and 5; and Mr.V.K. Shah, learned advocate waives service of notice on behalf of Citi Bank, respondent no.4.

3. The petitioner is aggrieved by the notice dated 13th December 2007 (Annexure 'H') issued by the Commercial Tax Officer (5), Division-5, Ahmedabad to the Manager, City Bank, calling upon the Bank to pay a sum of Rs.16,16,567/- to the Commercial Tax authorities towards the dues of the petitioner under the Assessment Order dated 8th October 2007.

4. The petitioner's case is that the petitioner has already filed an appeal before the Appellate Authority, viz. Deputy Commissioner, Commercial Tax, Appeal-I, Ahmedabad and that during pendency of the appeal and even before stay application can be heard, coercive recovery is being made.

5. On the other hand the learned Assistant Government Pleader submits that since the assessment order is already passed and the petitioner has already preferred an appeal, the matter may be left to the discretion of the Appellate Authority and this petition may not be entertained.

6. It is true that ordinarily, this Court would not interfere at this stage when the matter is very much pending before the Appellate Authority and hearing of the stay application is also pending before the Appellate Authority. However, since even during pendency of the hearing of the stay application, the respondent authorities are seeking to make coercive recovery of the entire tax amount as well as penalty imposed at the rate of 200% and that coercive recovery is very apparent from Annexure 'H'-notice dated 13th December 2007 addressed by the Commercial Tax Officer (5) to the Citibank, we are of the view that the interests of justice would be served if the petition is disposed of with a direction that upon the petitioner depositing 50% of the tax amount with 50% interest but without any deposit of penalty at this stage, there shall be interim stay against coercive recovery during pendency of the appeal. It transpires from the assessment order dated 8th October 2007 that the balance tax amount payable is Rs.5,01,361/- with interest amounting to Rs.1,12,784/- and

penalty at the rate of 200% quantified at Rs.10,02,522/-.

7. Accordingly during pendency of the appeal, the petitioner shall deposit, without prejudice to the rights and contentions of the parties, 50% of Rs,05,01,361/-, and 50% of Rs.1,12,784/-. If these amounts are deposited before the Appellate Authority within two weeks from today, during pendency of the appeal, there shall be interim stay against the coercive recovery on the basis of the order dated 8th October 2007. In view of the undertaking being given by the learned counsel for the petitioner under instructions of the proprietor of the petitioner-firm, who is present before the Court, that the 50% of the amounts as aforesaid shall be deposited within two weeks from today, this order shall come into force immediately subject to the condition that the petitioner shall deposit the above 50% amounts with the authority within two weeks from today. In case the above amounts are not deposited within two weeks from today, the stay shall stand vacated automatically without any further order of this Court.

8. It is clarified that this Court has not gone into merits of the matter and the Appellate Authority shall decide the appeal in accordance with law.

9. The petition is accordingly disposed of in the aforesaid terms. Rule is made absolute in the above terms. Direct service is permitted today.

(M.S. SHAH, J.)

(RAVI R. TRIPATHI, J.)

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